

RECORDS MANAGEMENT COMMITTEE
City Manager's Conference Room, Eighth Floor
400 Stewart Avenue, Las Vegas, Nevada
CITY OF LAS VEGAS INTERNET ADDRESS: <http://www.ci.las-vegas.nv.us>

February 2, 2001
3:30 p.m.

CALL TO ORDER: Deputy City Manager Selby called the meeting to order at 3:36 p.m.

ATTENDANCE: Barbara Jo (Roni) Ronemus, City Clerk (Excused)
Doug Selby, Deputy City Manager
Radford Snelding, City Auditor (Excused)
John Redlein, Assistant City Attorney
Mark Vincent, Director, Finance and Business Services
Joseph Marcella, Director, Information Technologies
Richard Goecke, Director, Public Works
Sharon Kuhns, Records Administrator
Vicky Darling, Assistant Deputy City Clerk

ANNOUNCEMENT MADE RE COMPLIANCE WITH THE OPEN MEETING LAW - Meeting noticed and posted at the following locations:

Downtown Transportation Center, City Clerk's Board
Senior Citizens Center, 450 E. Bonanza Road
Clark County Government Center, 500 S. Grand Central Pkwy
Court Clerk's Bulletin Board, City Hall
City Hall Plaza, Posting Board

(3:36)

1-7

BUSINESS:

A. APPROVAL OF FINAL MINUTES BY REFERENCE OF THE RECORDS MANAGEMENT COMMITTEE MEETING OF JANUARY 12TH, 2001

MARCELLA - Motion to APPROVE - VINCENT - seconded the motion – UNANIMOUS with Ronemus and Snelding excused

(3:37)

1-21

B. DISCUSSION AND POSSIBLE ACTION ON THE CITY OF LAS VEGAS PUBLIC RECORDS PROCEDURES.

Vice Chair Selby called Items B, C and D for simultaneous discussion. Ms. Kuhns confirmed that the changes from the previous meeting had been incorporated into the current revision of the procedure. In addition, an additional section was drafted regarding amended fee schedules to be presented to the Committee by individual departments. It would appear since the resolution makes reference to amended fee schedules, the Committee must determine whether it should be

part of the procedure in the very generic manner drafted. Samples are included for departments to use in designing their amendments. The resolution remains unchanged. Last meeting included alternatives which would create a significant number of gray areas which need to be addressed in order to be in compliance with the Nevada Revised Statutes. When the matter is presented to the Council for action, both the resolution and procedure will be included as backup.

Ms. Kuhns indicated that the Committee was being provided survey results which reflect 9 of 10 departments provides free copies to other entities and 5 of 10 provide free copies to the public. This information may assist the Committee with the guidelines. A procedure is used City-wide, but is also a public document. Mr. Vincent agreed that the procedure should include how departments go forward with alternate fee schedules. Assistant City Attorney Redlein responded that the name could be misleading if the issue involved a waiver of fees. Mr. Vincent clarified that the schedule would include the waiver and other fees for unique requests. For example, bid documents would not be charged at one dollar per page, maps or documents outside the 8.5 x 11 or 8.5 x 14 documents. It is also important to create an incentive for the use of the electronic service which might include a nominal annual fee for various documentation like bid packages.

Assistant City Attorney Redlein outlined the City's ability to create publications and establish a set fee for such publications. These publications would only fall under the public records request when they are obtained from the City Clerk who only has the one official copy or after all the additional printed copies of the publication have been given out. Once there is one on the shelf for the department, a request for the 1984 Comprehensive Annual Financial Report (CAFR) for example becomes a public records request, where the current CAFR is a request for a routine publication. Other publications, such as a pamphlet for Building and Safety, fall into a similar category. Publications are created or reproduced routinely for distribution and retained as a historical document as well. The two categories are clearly distinguishable. Ms. Kuhns added that there is still a posting requirement for items within that category. Mr. Vincent pointed out that there is no law to provide the additional and free copies to other entities. However, it is done on a reciprocal fashion to other entities. Free copies are also provided to educational and research institution. Should that category be included as a waiver? Charging those institutions would create considerable negative feedback.

Assistant City Attorney Redlein described adopting a standard fee schedule, creating a department fee schedule for unusual copies and a department price list for publications. Requests to the Clerk however would be a public records request and fall under the standard fee schedule. Vice Chair Selby pointed out that the publication exclusion is clearly set forth. Mr. Vincent countered that the Committee had previously discussed that the publication section involved the City handing out free publications from other entities, such as the Federal government. Ms. Kuhns added that the proposal would further confuse the Clerk's office routing public records requests all over the City and no one knows what documentation sits within a department and what the department should be handing out versus funneling back to the Clerk. With everything coming to the Records Management Committee (RMC), there will be an advantage in knowing the totality of what is out there in the City and what different departments are doing. Frequently, requests get bumped around and end up with the Council or citizens request documents from the Council expecting to receive it for free and the Council members then want to know why they are getting the call.

Assistant City Attorney Redlein stressed that there is a best interest of the City doctrine as well. Information may be created or duplicated by a department in order to educate the public or some other beneficial purpose. The brochure created is filed with the Clerk for historical purposes. If requested from the Clerk, the fee is one dollar per page as a public records request. However, the item would include a note that the item is available from the Building and Safety for a set two dollars. Mr. Vincent indicated that the solution proposed would work. Similarly, it is in the best interests of the City to get as many bid packages out as possible because it increases competition and lower bids. Vice Chair Selby and Ms. Kuhns discussed whether the RMC or the Public Information Office would make the call whether a document is a publication. Assistant City Attorney Redlein recommended that the director be tasked with setting the price list or charge for the publication.

Mr. Marcella pointed out that there must be equity with documentation provided on the website. Further, publication costs might vary between departments since funding might be general fund, enterprise fund or some other source. The funding source could influence the charge established. Such documentation would also include old CAFRs. Assistant City Attorney Redlein replied that prior to selling the publication, the requester could be advised that the information is available free on the web. Mr. Goecke concurred with each department director establishing the charges because there is information that may influence that decision.

Mr. Goecke questioned the application of best interests of the City with regard to waiving fees. There are instances when waters can be calmed easily by providing information through documentation. It would be difficult to believe that any waivers would involve large sums of money. In fact, it would seem the accounting and auditing of such small amounts would justify providing minimal requests for free. Assistant City Attorney Redlein concurred that the City Clerk had estimated her free copies to the press at 37 pages for 2000.

Vice Chair Selby confirmed a consensus of the members that publications will be removed from the fee schedule and that the RMC is moving toward an informal discretionary policy for a director's waiver. Mr. Vincent stressed that the one dollar per page is a deterrent for people to request only what they really want or need. As for publications, how would that language be created? Assistant City Attorney Redlein suggested, "this term does not include books, pamphlets or documents published in advance for distribution." Vice Chair Selby suggested that "for which the City shall establish a price list" be added to the end of that sentence. That would necessitate a revision to Page 6.

Assistant City Attorney Redlein questioned whether media requests should be removed from Page 1 as well. Mr. Vincent clarified that the intent of that language is who is the focal point for contact and coordination. Vice Chair Selby suggested that the definition of media be revised. Assistant City Attorney Redlein offered language that would read, "media includes recognized members of news gathering agencies, reporters or other correspondents." That would eliminate the need to make any changes to Page 3.

Assistant City Attorney Redlein explained the balance test which includes, for example, the right to privacy of a public document such as an autopsy report when requested by general members

of the public versus a request from a family member who might share genetic health problems. Similarly, the blueprint of the Mayor's house might be withheld from the general public but provided to an individual with a complaint against the same builder who constructed the Mayor's house. The balancing test would probably be referred to the City Attorney's office who would determine whether the interest in public disclosure outweighed public or private interests in maintaining the confidentiality of a particular public record on what was defensible in court.

Vice Chair Selby confirmed that there were no other changes or proposed revisions to Pages 2, 3, 4 or 5. Assistant City Attorney Redlein initially suggested that the caption on Page 6 be changed from Amending Fee Schedule to Amending Scheduled Fees. It was agreed that the actual fees would not be incorporated into the procedure. He then concurred with Vice Chair Selby that perhaps a generic caption of Fees should be used.

Ms. Kuhns initiated discussion regarding waiving fees for reciprocal entities. Mr. Marcella added that reciprocating entities does not always equate to a dollar-for-dollar reciprocation. Assistant City Attorney Redlein questioned waiving fees for other entities which charge the City. For example, the County charges the City for permits even though the City does not charge the County in return. Mr. Vincent explained that the County uses the explanation that their permit function is an enterprise fund. Ms. Kuhns noted that the County Election Department has charged the City for election reports in the past. Assistant City Attorney Redlein indicated that the director's discretion should extend beyond just reciprocating entities. He cited an example where Mr. Riggelman provides documentation to diffuse potential situations. The RMC should meet with all directors who can present their list of when they give away documentation and if the RMC approves that list, that creates the alternate.

Mr. Marcella repeated past comments that the fee is a deterrent to abuse and complies with passing along costs. Assistant City Attorney Redlein replied that the public purpose is best served by providing documentation free. Mr. Vincent reiterated that the difficulty is with the requirement for posted guidelines. Sometimes requests are voluminous to disguise what is actually being sought. Assistant City Attorney Redlein pointed out that anyone has the ability to review the records without charge. Vice Chair Selby noted that the discretionary argument would be made by the director when appearing before the RMC.

Ms. Kuhns asked for specific language regarding discretionary waiver. The NRS permits the waiver subject to a written policy which would be met by the proposed resolution. Secondly, posting of the terms of the policy must be included. Any notation that directors have the authority to waive fees, everyone will ask to speak with the director. Mr. Vincent agreed that this was not something that the City would want out in front of the public. But providing the page would be in the best interests of the City. Ms. Kuhns questioned Assistant City Attorney Redlein whether the City would be in violation of that posting requirement if the RMC maintained the minutes and records of the waivers and departments posted the actual fees. Assistant City Attorney Redlein recommended that the City post the resolution with inclusionary language regarding waiver for reciprocating entities. Informally, directors may be informed that deviation from the schedule outside that one exception might have to be defended to the City Manager. The only defense in that instance would be that providing the document free was in the absolute

best interests of the City. The City Manager trusts her directors. Vice Chair Selby and Mr. Vincent concurred that the proposed informal policy was sufficient.

Vice Chair Selby suggested providing the press with a copy of the procedure prior to taking it before the Council in order to determine any areas of contention. Mr. Goecke concurred and Mr. Vincent recommended that Mr. Riggleman work with the press, gauge the reaction for anything the RMC should address or tweak and then provide them with a copy. Mr. Marcella answered that the changes are not substantial enough to need to review it with them more than once. Vice Chair Selby indicated that it would be better to be aware of any areas of concern and receive input prior to a Council meeting.

Assistant City Attorney Redlein provided language for the end of the fee schedule language which read, "public record copying costs are waived for government requestors who waive copying costs for the City." That would be consistent with the law and directors would be advised to apply the public purpose doctrine when providing a modest amount of documents without utilizing the fee schedule.

Mr. Vincent indicated that the language read into the record regarding the resolution would grant flexibility in establishing alternative fee schedules. Assistant City Attorney Redlein verified that the last sentence in the last Whereas clause will be deleted as it is repetitive of the first sentence of the Therefore clause. No other change to the resolution is necessary.

There was no further discussion.

GOECKE - Motion to APPROVE the procedure as revised and amended - VINCENT - seconded the motion – UNANIMOUS with Ronemus and Snelding excused

(3:38 – 4:46)

1-27

C. DISCUSSION OF PROPOSED CITY OF LAS VEGAS RESOLUTION ON FEES CHARGED FOR PUBLIC RECORDS AND CERTIFICATION OF RECORDS.

NOTE: All discussion regarding this item was held in conjunction with Item B.

GOECKE - Motion to APPROVE – REDLEIN - seconded the motion – UNANIMOUS with Ronemus and Snelding excused

(3:38 – 4:46)

1-27

D. DISCUSSION AND POSSIBLE ACTION ON THE ISSUE OF DEPARTMENTAL FEE STRUCTURE FOR DUPLICATION OF PUBLIC RECORDS.

NOTE: All discussion regarding this item was held in conjunction with Item B.

(3:38 – 4:46)

1-27

E. DISCUSSION AND POSSIBLE ACTION ON THE DEVELOPMENT OF CITY OF LAS VEGAS PRIVACY POLICY REGARDING ACCESS TO PUBLIC, SENSITIVE AND SECURED INFORMATION.

Mr. Marcella presented SB48 regarding privacy issues involved in public documents. The example was given with the use of credit cards for website payment of parking tickets. The City should be proactive in drafting language for the website on protecting or disclosure as to the use of sensitive information. He has gathered samples from other entities. Seminars are being provided to government entities to allow them to get ahead of the curve on that as well. There are also consultants who assist in determining what can be distributed versus what cannot. These privacy rules include encrypting and strict guidelines. Assistant City Attorney Redlein and Ms. Kuhns discussed that the proposed policy would apply to both paper and electronic records. Mr. Vincent explained that it is a response to potential mishandling of data. Mr. Goecke suggested that the item be stricken from this agenda, Mr. Marcella be directed to work on a draft policy and then that draft be reviewed at a City Manager staff meeting or work session rather than in this forum.

Assistant City Attorney Redlein questioned the proposed action by the City. Mr. Marcella and Mr. Vincent discussed the access to credit card information, social security numbers and other private information to be protected from misuse. Mr. Marcella and Ms. Kuhns stressed that there is slew of regulation coming and this would be a proactive response. Many of the records are already regarded as sensitive and are destroyed by shredding without a formal policy. The proposed state regulation is more restricted than the federal guidelines but includes only a misdemeanor punishment for violation. Section 720 of NRS will be constantly expanding in the future. Mr. Vincent pointed out that the balancing test will be applied to this policy as well. Ms. Kuhns and Mr. Marcella pointed out that a policy would put the City's position out in the form of disclosure.

Vice Chair Selby recommended that the discussion be placed on a future agenda and Mr. Marcella provide something as to what the policy might look like. A determination can be made whether the RMC is the proper forum for the discussion. Assistant City Attorney Redlein agreed that there was instances where the City would prevail on a balancing test but the custodians of those records do not realize that. Other things are very obvious, such as credit card numbers, that they must be part of a protected system and use a sensitive antenna for when to seek direction from the City Manager or City Attorney as to what must be kept confidential.

There was no further discussion.

(4:46 – 4:59)

1-2487

F. INFORMATIONAL MATTERS FOR FUTURE RECORDS MANAGEMENT COMMITTEE AGENDAS.

Ms. Kuhns summarized that the 2/23/2001 agenda will include the final version of the procedure and resolution adopted at this meeting and discussion regarding directors presenting their fee schedules. Mr. Goecke suggested that the directors fee schedules could be addressed at an City Manager's Executive Meeting. Vice Chair Selby suggested getting the information to Chair Ronemus who could make that presentation.

There was no further discussion.

(4:59 – 5:00)

1-3164

CITIZENS PARTICIPATION:

None.

ADJOURNMENT:

Vice Chair Selby adjourned the meeting.

The meeting adjourned at 5:00 p.m. **(1-3257)**

/vwd